

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

NANOENTEK, INC. and DIGITAL-BIO
TECHNOLOGY CO., LTD.,

Plaintiffs,

v.

BIO-RAD LABORATORIES, INC.,

Defendant.

Case No. 2:11-cv-00427-RBS-TEM

**DECLARATION OF CHANIL CHUNG IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER VENUE**

I, Chanil Chung, hereby declare the following:

1. I am over the age of twenty-one (21) and am competent to give this declaration.

Unless otherwise explicitly stated, I have personal knowledge of all facts stated in this declaration.

2. I currently serve as the Chief Technology Officer at NanoEnTek, Inc. ("NanoEnTek"). NanoEnTek and its wholly-owned subsidiary Digital-Bio Technology Co., Ltd. (collectively, "Digital-Bio") both headquartered at 235-2 Acre High-end Tower, Guro-3-dong, Guro-gu, Seoul, Republic of Korea.

3. I currently reside at 103-204 Lotte APT., Samsung 2-dong, Gangnam-gu, Seoul, Republic of Korea.

4. Founded in 2000, Digital-Bio Technology is a small Korean biotech company. Forming out of the laboratories of Seoul National University, the company has grown from ten to about eighty employees.

5. Digital-Bio makes slides for use as precision disposable hemocytometers, for highly accurate cell-counting in biomedical research. These slides are used in automated hemocytometers manufactured by Digital-Bio, including the Countess[®], ADAM-rWBC[®], ADAM-MC[®], ADAM-SCC[®], and Tali[®], (“Digital-Bio Automated Cell Counters”).

6. The Digital-Bio Automated Cell Counters depend upon the accompanying slides. For example, the Countess[®] Cell Counting Chamber Slides are specifically made for use in the Countess[®], the world’s first personal automated cell counter, and enable the Countess[®] to provide an accurate cell count. Digital-Bio’s slide-making technology, thus, is at the core of company’s product line, and a source of substantial revenue and goodwill for Digital-Bio. This core technology enables making accurate, reliable, economical slides for the automated cell counters.

7. Countess[®] Cell Counting Chamber Slides (among other products manufactured by Digital-Bio) are manufactured according to the methods claimed in at least Claims 1, 5 and 13 of U.S. Patent No. 7,842,157 (the “157 Patent”), entitled “Method for Bonding Plastic Micro Chip,” issued on November 30, 2010.

8. Countess[®] and Countess[®] Cell Counting Chamber Slide products were introduced to the U.S. market in the third quarter of 2008. These products have been sold throughout the United States, including in the Commonwealth of Virginia.

9. Gross United States sales of Countess[®] slides grew steadily from their introduction in third quarter of 2008 until second quarter of 2010. Third quarter 2010 sales were off second quarter 2010 sales by almost 50%, fourth quarter 2010 sales were off second quarter 2010 sales by over 70%, and first quarter 2011 sales fell to an historic low, which was off second quarter 2010 sales by almost 80%.

10. Since the third quarter of 2010, we have observed erosion of sales of Countess[®] slides and a loss of customer goodwill with respect to the Countess[®] line of products in the United States (including Countess[®] and Countess Cell Counting Chamber Slides). The decline on Countess[®] and Countess Cell Counting Chamber Slide sales coincides with Bio-Rad's introduction and sale of its TC-10 automated cell counter and slides in the third quarter of 2010.

11. Digital-Bio did not make any substantial change to the price of Countess[®] Cell Counting Chamber Slides in 2010 or 2011. However, in early the first quarter of 2011, Digital-Bio began giving away hundreds of free slides to purchasers of Countess[®] devices in order increase sales and regain lost market share and customer goodwill.

12. Digital-Bio brought suit against Bio-Rad in the U.S. District Court for the Eastern District of Virginia shortly after issuance of its '157 patent, seeking expeditious and efficient resolution of its infringement claims. The prompt resolution of this patent infringement litigation is critical to Digital-Bio recovering and maintaining customer goodwill in a new product market in the United States.

13. A delay of trial or resolution of this case by months, if not years, would cause irreparable harm to Digital-Bio's goodwill in the United States.

14. Travel to the United States District Court for the Northern District of California is no more convenient for me and other Digital-Bio employees than is travel to the Norfolk Division of the United States District Court for the Eastern District of Virginia.

15. Transfer to the United States District Court for the Northern District of California would cause additional travel expenses on me and Digital-Bio employees traveling from the Republic of Korea to the United States.

16. Lodging and other expenses for me and other Digital-Bio employees in San

Francisco would cost Digital-Bio substantially more than lodging in Norfolk, Virginia. Based on my research, hotels in San Francisco average nearly double the expense when compared to hotels in Norfolk, Virginia. For example, Marriott's hotels range from \$220-420 in San Francisco versus \$99-169 in Norfolk. See attached Exhibit A, which contains true and correct copies of pages printed from various hotel chains' reservations websites.

I further declare subject to the penalty of perjury under the laws of the Commonwealth of Virginia and of the United States of America that the foregoing is true and correct.

Executed this 2th day of November, 2011 at Nanoentek, Seoul



Chanil Chung